

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
DELTA DIVISION

LONNIE TAYLOR, Plaintiff

v.

No. 2:94CV199-EMB

FITZGERALD CASINO, Defendant

FINAL JUDGMENT

Pursuant to the provisions of 28 U.S.C. §636(c), the parties in the above entitled action having consented to trial and entry of final judgment by the undersigned United States Magistrate Judge, and in accordance with an Opinion entered this day, it is hereby

ORDERED AND ADJUDGED:

1. That the plaintiff take nothing by his complaint against defendant Fitzgerald Casino.

2. That judgment be and is hereby entered in favor of the defendant, Fitzgerald Casino.

3. That this action be, and is hereby, dismissed with prejudice, with all costs to be taxed to the plaintiff.

ORDERED AND ADJUDGED, this, the 19th day of February, 1997.

UNITED STATES MAGISTRATE JUDGE

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FOR THE NORTHERN DISTRICT OF MISSISSIPPI
DELTA DIVISION

LONNIE TAYLOR, Plaintiff

v.

No. 2:94CV199-EMB

FITZGERALD CASINO, Defendant

O P I N I O N

The parties in the above entitled action having consented to trial and entry of final judgment by the United States Magistrate Judge under the provisions of 28 U.S.C. §636(c), with any appeal to the Court of Appeals for the Fifth Circuit, the action came on for non-jury trial before the court at Greenville on February 13, 1997, Eugene M. Bogen, United States Magistrate Judge, presiding. This diversity action was brought by plaintiff Lonnie Taylor under 42 U.S.C. §2000e, et seq., alleging job discrimination against defendant Fitzgerald Casino. Plaintiff appeared pro se and defendant was represented by retained counsel.

At the close of plaintiff's case, defendant moved for judgment in its favor as a matter of law pursuant to Rule 50, Federal Rules of Civil Procedure. At that time the court took the motion under advisement and carried the motion with the case so

that the record could be fully developed. The decision reached today renders the motion moot.

FINDINGS OF FACT

Plaintiff submitted a job application to defendant on January 26, 1994. Plaintiff's application indicated he preferred a floor position and secondarily a job as a box dealer.¹ Plaintiff's application stated he was a high school graduate with one year at a technical college; that he had ten months experience as a craps dealer at Splash Casino, two months experience as a craps box person at Lady Luck Casino, and two months experience as a craps dealer captain at President Casino. In addition plaintiff indicated he was available for work in February, 1994 and desired work on the swing shift which runs from 6:00 p.m. until 2:00 a.m. Plaintiff contends he was qualified for the job of floor person at defendant Fitzgerald's Casino; that he was not hired because of his race, which is black; that other persons who are white and less qualified than plaintiff were hired as floor persons.

Defendant's swing shift manager, Donna Bryant, an employee with 20 years experience in the gaming business at the time, received plaintiff's application from defendant's Human

¹A dealer is the casino employee who runs a game such as craps or blackjack. A box person operates as a part time supervisor of dealers and also works as a dealer. A floor person has supervisory authority over box persons and dealers and also does public relations work with customers.

Relations Department. The application did not reflect the applicant's race. After reviewing the application, Ms. Bryant contacted plaintiff in March, 1994 and arranged for him to appear for an audition and interview. Plaintiff scored very high on the audition test and was interviewed. Three or four days following his interview, Ms. Bryant contacted plaintiff and offered him a job as a box person. Plaintiff turned the job offer down because he wanted work as a floor person.

Plaintiff contends that after he was rejected as a floor person, whites with less experience and qualifications than him were hired by defendant to fill floor positions. The persons identified by plaintiff and his witnesses as less qualified or experienced whites hired by defendant as floor persons are John Lefevre, Paul Whitaker, Virginia Clem, Karen Boyer, and Donna Vizi.²

Lefevre's date of application was January 14, 1994. His application stated that he was a college graduate; that he had operated his own businesses between 1984 and 1993 and that he was presently employed as a box man at Lady Luck Casino. Whitaker's

²Neither party could establish when these persons were actually hired. During the period of time interviews and auditions were being held, defendant was not open for business. Defendant had planned to open in April, 1994, but because of various delays, defendant did not open for business until June, 1994. Defendant began making commitments to hire individuals as early as February or March, but most of the persons hired had "official" hire dates in late May.

date of application was February 25, 1994. His application stated he was a high school graduate with one year of college; that he had been the manager of a Domino's Pizza, and that he was currently employed as a craps and blackjack dealer with floor experience at Bally's Casino. Clem's date of application was April 5, 1994. Her application stated she was a high school graduate; that she had been employed as a blackjack dealer at Splash Casino from October, 1992 to July, 1993; a floor person at Lady Luck Casino from July, 1993 to November, 1993; and a floor person at Bally's Casino from November, 1993 to April, 1994. Boyer's application was March 3, 1994. Her application stated she was a licensed practical nurse; that she had 14 months experience as a dealer at Splash Casino with occasional box work and five months experience as a box and floor person at Bally's Casino. Vizi's date of application was February 28, 1994. Her application stated she was a high school graduate with one year at a technical college; that she worked one year at Splash in Human Relations; three months at Lady Luck as a floor person, and four months at Bally's as a floor person.

In May, 1994 plaintiff returned to Fitzgerald's and informed Ms. Bryant that he would accept the position as box person which she had offered him in March. By that time Ms. Bryant had placed plaintiff's application in the rejection pile, and she informed him that she had filled all box positions but would hire him as a dealer. Plaintiff accepted the job as a dealer with an

effective hire date of May 30, 1994. Shortly thereafter plaintiff changed his mind about accepting the job as a dealer and voluntarily quit his employment by failing to report for work.

Plaintiff filed a charge of race discrimination with the Equal Employment Opportunity Commission, and a determination was made by letter dated November 30, 1994, that the evidence on file did not support that the Casino failed to hire plaintiff because of his race.

LAW

To establish a prima facie case of failure to hire because of race, a plaintiff must show: (1) that he belongs to a racial minority; (2) that he applied and was qualified for a job for which the employer was seeking applicants; (3) that despite his qualifications, he was rejected; and (4) that, after his rejection, the position remained open and the employer continued to seek applicants from persons of plaintiff's qualifications. McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802 (1973). The burden of establishing a prima facie case is at all times on the plaintiff. St. Mary's Honor Center v. Hicks, 509 U.S. 502 (1993); Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 253 (1981).

CONCLUSIONS

The court finds that plaintiff clearly established the first three elements -- he is black; he applied for a job with the casino for which he was qualified; and, as to the third element,

the proof establishes that, despite his qualifications, plaintiff was rejected for the position of floor person and offered a lesser position as box person. However, after reviewing the above referenced applications, the court concludes that plaintiff fails to carry his burden of proof on the fourth element, in that he has not shown that the casino continued to take applications from persons of the same qualifications as the plaintiff.

All of the white persons who plaintiff alleges had less experience than him actually had previous experience as casino floor persons, with the exception of Lefevre. Plaintiff had never before worked as a floor person. Neither had Lefevre, but he had operated his own business for nearly ten years and was clearly more qualified for a supervisory position than plaintiff, who had only limited (two months) experience as a craps dealer "captain."

Further, notwithstanding Lefevre and Whitaker's qualifications, both men were originally hired as box persons -- a position the plaintiff had turned down. Both men "rose from the ranks" and became floor persons because two people who had been hired as floor persons on the swing shift notified Ms. Bryant shortly before the casino opened that they had decided not to take the jobs. It was defendant's policy and practice to post job openings and to fill them whenever possible by transfers from within the casino, and Ms. Bryant then offered the positions to Lefevre and Whitaker. Presumably, if plaintiff had accepted the

original job offer, he also would have been available for transfer to a floor position before he ever actually began work for the defendant.

Neither party established at trial whether or not the three females who ended up with floor positions -- Virginia Clem, Karen Boyer, and Donna Vizi-- were offered them initially or transferred into them during the fluctuating period prior to the casino's opening. Regardless, these three persons each had specific experience as floor persons -- Clem had floor experience at Lady Luck Casino and Bally's; Boyer had worked as a floor person at Bally's; and Vizi had worked as a floor person at Lady Luck and Bally's.

Further, the evidence presented at the trial of this case does not permit the conclusion that plaintiff was not offered a floor position because of his race. After the initial review of his application, Ms. Bryant made numerous calls to plaintiff's residence in an effort to arrange for his audition and interview. After the audition and interview, Ms. Bryant again initiated contact with plaintiff to offer him a box job. Although plaintiff rejected the job offer, when he later offered to accept a box job, after all those jobs had been filled, Ms. Bryant immediately offered plaintiff a job as a dealer. Also, defendant hired a black

male, Ty Smith, as a floor person during the relevant time period.³ The difference between Ty Smith and the plaintiff is that Smith had prior experience as a floor person.

Thus, the court finds that plaintiff has failed to carry his burden of proof to establish a prima facie case of discrimination. Further, nothing in the history of plaintiff's dealings with defendant nor any of the information contained in the exhibits suggest any racial animus on defendant's part. The court therefore finds that judgment should enter in favor of the defendant; that the plaintiff take nothing by his complaint against defendant Fitzgerald Casino; and that this action be dismissed with prejudice, with all costs to be taxed to the plaintiff.

A separate order in accordance with this opinion shall issue this same day.

THIS, the 19th day of February, 1997.

UNITED STATES MAGISTRATE JUDGE

³Plaintiff offered no evidence as to the blacks who applied for floor positions and were either not hired or were offered a lesser position.